

**CITY OF EL MONTE
INTERDEPARTMENTAL COMMUNICATION
ADMINISTRATIVE SERVICES**

For the Meeting of January 20, 2009

To: Mayor Gutierrez and City Council Members

From: James W. Mussenden, City Manager
Dante G. Hall, Assistant City Manager

Prepared by: E. Clarke Moseley, City Attorney

Subject: Addendum to Employment Agreements for Chief of Police, City Manager and City Attorney

BACKGROUND:

The City Council, as consistent with the El Monte Municipal Code, reviews and approves employment agreements for upper management on an as needed basis. With the existing financial crisis not only in our City but the entire State of California, certain measures have been taken by the City to alleviate the budget shortfall which currently exists. As has been mentioned before, the City has not only had to reduce its spending but has also had to reduce the existing budget for each of the City's departments. It has become imperative that other approaches be considered in order to balance our budget and keep our City from the ongoing financial strains. Based upon the above, an adjusted cost reduction package has been prepared for the City Council to review and consider. The cost reduction package consists of addendums to the employment agreements for the City Manager, the City Attorney and the Chief of Police. The specifics of each Agreement are stated below:

CITY MANAGER EMPLOYMENT AGREEMENT:

As part of the cost reduction package, the City Manager has consented to a ten percent (10%) reduction in pay for the remainder of his existing Employment Agreement, which is for the period of February 1, 2009 through May 31, 2009.

The proposed reduction in pay beginning on February 1, 2009 will not reduce amount or value of the fringe benefits or other non-salary compensation provided by the City to the City Manager.

CITY ATTORNEY LEGAL AGREEMENT:

The existing Employment Agreement of the City Attorney was approved December 5, 2007, extending his employment an additional eighteen (18) months from December 31, 2007 through June 30, 2009. As part of a proposed cost reduction package, the City Attorney has consented to terminate his existing employment contract, effective January 31, 2008 and enter into retirement under the terms of his original employment contract, and continue to provide legal services as to the City under a new legal services/independent contractor agreement.

The prevailing terms of the Independent Contractor Agreement are as follows:

- Fiscal year* →
- A. Section 2 – Term: Term of representation shall be from February 1, 2009 through January 31, 2012. The City Attorney shall not render the aforementioned services in excess of nine hundred and sixty (960) hours per year during any twelve (12) month period during the term of this Agreement.
- B. Section 3 – Compensation and Method of Payment: The City Attorney shall provide the required legal services to the City at a rate of one hundred and twenty five dollars (\$125.00) per hour.
- 10.01

- C. Section 14 – Termination: Either party may terminate the new legal services agreement upon ninety (90) days prior written notice.

The proposed savings to the City on a yearly basis by having the City Attorney retire early but to and continue to provide certain legal services to the City on an independent legal services contract is estimated at \$150,000.

DEPUTY CITY MANAGER PUBLIC SAFETY (CHIEF OF POLICE):

The Employment Agreement of the Deputy City Manager Public Safety (Chief of Police) was approved September 16, 2008. The term of employment shall be from February 1, 2009 through December 31, 2012. The Chief of Police has consented to a ten percent (10%) reduction in pay for a period of six months commencing January 1, 2009 and ending June 31, 2009.

The reduction will consist of the following: (i) \$1,808.50 from his monthly base salary, (ii) \$162.80 from his monthly longevity pay and (iii) \$18.10 from his monthly shooting pay. The total reduction in pay will be \$11,936.40.

The proposed reduction in pay will not reduce the amount or value of the fringe benefits or other non-amended salary compensation provided to by the Deputy City Manager Public Safety (Chief of Police).

RECOMMENDATION:

It is recommend that City Council approve the addendums to the employment agreements for the City Manager, the City Attorney and the Chief of Police.

JAN 20 2009

PRESENTED TO EL MONTE CITY COUNCIL	
<input type="checkbox"/>	APPROVED
<input type="checkbox"/>	DENIED
<input type="checkbox"/>	PULLED
<input type="checkbox"/>	RECEIVE AND FILE
<input type="checkbox"/>	CONTINUED
<input type="checkbox"/>	REFERRED TO
CHIEF DEPUTY CITY CLERK	

2009
AGREEMENT FOR CITY ATTORNEY LEGAL SERVICES
BY AND BETWEEN
THE CITY OF EL MONTE
-AND-
E. CLARKE MOSELEY, AN INDIVIDUAL

This AGREEMENT made and entered into this ____ day of _____, 2009, by and between the City of El Monte, a municipal corporation, the El Monte Community Redevelopment Agency, a public body corporate and politic, (hereinafter collectively called "City") and E. Clarke Moseley, an individual. E. Clarke Moseley and the City enter into this Agreement in light of the facts set forth in the following Recital paragraphs:

WHEREAS, E. Clarke Moseley has served as the City Attorney and Agency General Counsel of the City since June 1, 2002, in the capacity as a public employee of the City under a written contract dated May 7, 2002, as amended; and

WHEREAS, from and after the effective date of this Agreement, City desires to retain the services of E. Clarke Moseley as City Attorney/Agency Counsel/City Prosecutor of the City of El Monte/Community Redevelopment Agency as attorney of record and as an independent contractor, in accordance with the El Monte Municipal Code; and

WHEREAS, E. Clarke Moseley desires to serve the City under this Agreement as City Attorney/Agency Counsel/City Prosecutor of the City of El Monte/Community Redevelopment Agency as an independent contractor under the terms of this Agreement; and

WHEREAS, it is the desire of City, to establish certain conditions for his legal services to the City, and to specify certain conditions of E. Clarke Moseley as an independent contractor to serve as the City Attorney and Agency General Counsel, all as set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT

SECTION 1. SCOPE OF SERVICES – Subject to the terms and conditions set forth in this Agreement, E. Clarke Moseley (hereinafter referred to as "City Attorney") shall provide to City the legal services described and set forth in the materials attached and incorporated herein as *Exhibit "A."* Unless otherwise indicated in this Agreement, City Attorney shall provide said legal services at the time, place, and in the manner specified in *Exhibit "A"* under the direction of the El Monte City Council and/or the City Manager. Under this Agreement, City Attorney shall not render the aforementioned legal services in excess of nine hundred and sixty (960) hours per year during any twelve (12) month period during the term of this Agreement. City further agrees to provide City Attorney with office space, staff, telephone, and facsimile machine

for the conduct and delivery to the City of the legal services set forth in Exhibit "A", upon City Attorney's written request.

SECTION 2. TERM OF AGREEMENT – This Agreement shall have a term of three (3) years commencing February 1, 2009 through January 31, 2012. The Agreement shall terminate automatically on January 31, 2012.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT – City Attorney shall provide the legal services set forth in *Exhibit "A"* to the City at a rate of one hundred and twenty five dollars (\$125.00) per hour. City Attorney shall submit monthly bills to the City describing his legal services performed for the City and related costs provided during the previous month. City Attorney's monthly bills shall include the following information: (a) a brief description of legal services performed, (b) the date the services were performed and (c) the amount of time expended for services identified in each monthly bill.

Any out-of-pocket expenses of the City Attorney as authorized in Exhibit "A" shall also be reimbursed by the City to the City Attorney upon written request of the City Attorney and approved by the City.

SECTION 4. REPRESENTATIONS AND PERFORMANCE – City Attorney represents that he has the skills, experience and knowledge necessary to perform the legal services agreed to be performed under this Agreement. It is further understood by and between the parties that the City has relied upon City Attorney's representations that it has the skills, experience and knowledge to perform the undertaking set forth in this Agreement in a competent and professional manner. City Attorney understands the scope of the legal services to be performed under this Agreement. City Attorney warrants that he shall faithfully and diligently perform the legal services hereunder. City Attorney shall apply, at a minimum, generally accepted standards and practices applied by persons engaged in providing similar legal services in existence at the time of performance of its obligations hereunder.

SECTION 5. ASSIGNMENT – The expertise and experience of City Attorney are material considerations for this Agreement. The City has an interest in the qualifications and capabilities of City Attorney under this Agreement. In recognition of that interest, City Attorney shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of City Attorney's duties or obligations under this Agreement to any other person without the prior written consent of the City. Any attempted assignment shall be ineffective, null and void and shall constitute a material breach of this Agreement entitling the City to any and all remedies at law or in equity, including but not limited to summary termination of this Agreement.

SECTION 6. COMPLIANCE WITH LAWS – City Attorney shall be and remain at all times during the time of this Agreement member in good standing of the State Bar of California and shall keep himself informed of, and comply with, all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in carrying out the terms of this Agreement and in performing the legal services contemplated herein. City Attorney shall obtain and maintain

any and all licenses, permits and authorizations necessary to perform the legal services set forth in this Agreement at his own cost and expense.

SECTION 7. GOVERNING LAW AND VENUE – This Agreement shall be interpreted, constructed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall be exclusively in the County of Los Angeles. In the event of litigation in a United States District Court, venue shall lie exclusively in the Central District of California in Los Angeles, California.

SECTION 8. INDEPENDENT CONTRACTOR AND INDEMNITY –

- A. The City Attorney shall perform the legal services described in Exhibit "A" and as may be further directed by the City Council as an independent contractor. The City shall not provide nor shall the City be responsible to the City Attorney for any form of insurance coverage in favor of or for the benefit of the City Attorney, including without limitation for health care or other medical or disability benefits, unemployment, worker's compensation, automobile insurance, life insurance and the like. The City Attorney, shall not perform any of the legal services as set forth in Exhibit "A" as an employee of the City, and the City Attorney shall have no power or authority to bind the City to any contract, against, debt, obligation, or other liability with a third party except as may hereafter be expressly authorized by the City Council.
- B. The City Attorney is required by the Rules of the State Bar of California to inform his client, the City of El Monte, that the City Attorney does not maintain legal malpractice insurance coverage in favor of the City as of the effective date of this Agreement and that the City Attorney does not presently intend to obtain such legal malpractice insurance coverage in favor of the City at any time during the term of this Agreement. The City hereby acknowledges that it has been informed of this fact by the City Attorney and the City hereby waives the potential benefit of any such legal malpractice insurance which the City Attorney may hereafter obtain.
- C. The City shall defend, _____ harmless and indemnify the City Attorney against any for all claims and losses asserted against the City Attorney which may arise from facts or actions occurring during the term of this Agreement in direct consequence of the discharge of the City Attorney's legal services described in Exhibit "A" on behalf of the City.

SECTION 9. INTERPRETATION - The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement together with the advice of their respective attorneys.

SECTION 10. MODIFICATION - No amendment to, or modification of, this Agreement shall be valid unless made in writing and first approved by the City. The requirement for written modifications cannot be waived and any attempted waiver shall be invalid.

SECTION 11. NO THIRD PARTY BENEFIT - The parties agree that nothing in this Agreement may be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein. All rights and benefits under this Agreement inure exclusively to the parties.

SECTION 12. NOTICES - All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by fax or certified mail, postage prepaid and return receipt requested, addressed as follows:

CITY:

City of El Monte
C/o City Manager
11333 Valley Blvd
El Monte, CA 91731

CITY ATTORNEY:

E. Clarke Moseley, Esq.
11177 Wildflower Road
Temple City, CA 91780

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 13. SEVERABILITY - If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 14. TERMINATION -

- A. The City may terminate this Agreement immediately for violation of any provision contained herein. In addition, the City may, with or without cause and at any time, terminate this Agreement upon ninety (90) days prior written notice served upon City Attorney. In the event of termination, City Attorney shall be compensated for services performed up to the effective date of termination, provided, however, that the City may condition payment of such compensation upon City Attorney's delivery to the City of any and all documents, photographs, video and audio tapes, and other materials provided to City Attorney, or prepared by or for City Attorney or the City in connection with this Agreement and upon satisfactory completion of the services or portion thereof which the City Attorney has performed up to the effective date of termination.
- B. In the event City Attorney may otherwise voluntarily resign his position with City before expiration of the aforesaid term of this Agreement, City Attorney shall

give City ninety (90) days' written notice in advance, unless the parties otherwise agree in writing.

SECTION 15. WAIVER – The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

SECTION 16. CONFIDENTIAL INFORMATION – All information gained or work product produced by City Attorney in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to City Attorney. City Attorney shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the City Manager, except as may be required by law.

SECTION 17. DEFAULT – In the event City Attorney is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating City Attorney for any work performed after the date of default and may terminate this Agreement immediately by written notice to the City Attorney.

SECTION 18. ACKNOWLEDGEMENT – City Attorney represents and City acknowledges that City Attorney has direct or indirect financial interest in real property located with the City of El Monte commonly described as:

1. 11001 Valley Mall; and
2. 11401 Valley Boulevard; and
3. 11411 Valley Boulevard; and
4. 11750 Ramona Boulevard and adjacent La Madera Lot.

The City Attorney shall recuse himself from providing legal services to the City in any matter in which an ethical or legal conflict or interest may arise under applicable law or rule of the State Bar including without limitation, any business matter of the City in which any economic interest of the City Attorney may be potentially affected, including any of the properties identified in the preceding paragraph.

SECTION 19. ENTIRE AGREEMENT – This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between City Attorney and the City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid or binding. No amendment to this Agreement shall be valid and binding unless in writing and duly executed by the parties or their authorized representatives pursuant to Section 10 of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above. Provided this Agreement has been fully executed by the parties, this Agreement shall take effect on February 1, 2009.

CITY OF EL MONTE

Date: _____

ERNEST G. GUTIERREZ,
Mayor

Date: _____

JAMES W. MUSSENDEN,
City Manager

APPROVED AS TO FORM:

DAVID F. GONDEK,
Senior Deputy City Attorney

Date: _____

EL MONTE COMMUNITY
REDEVELOPMENT AGENCY

ERNEST G. GUTIERREZ,
Chairperson

CITY ATTORNEY
E. Clarke Moseley, an individual as an
independent contractor

E. CLARKE MOSELEY

APPROVED AS TO FORM:

DAVID F. GONDEK,
Senior Deputy City Attorney for the
El Monte Community Redevelopment
Agency

Date: _____

ATTEST:

LORENE GUTIERREZ
Clerk for the El Monte Community
Redevelopment Agency

2009
Agreement for City Attorney Legal Services
(E. Clarke Moseley)

EXHIBIT "A"

(A) The legal duties and responsibilities of the City Attorney (E. Clarke Moseley) shall encompass the following:

(1) Consult with the City Council and City Agencies as needed – rendering of legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions.

(2) Perform research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council on legal matters pertaining to City operations. If any area falls outside of City Attorney's area of expertise, City Attorney shall retain special counsel with the prior consent of the City Council. City Attorney shall have the supervisory role with respect to all work in which special counsel is retained.

(3) Attend all meetings of the City Council and the Agency and such other boards or commissions of the City Council as may be necessary from time to time. "Meetings" include all regular sessions, closed sessions, and as needed work sessions.

(4) Review and/or prepare ordinances, resolutions, orders, agreements, forms, notices, declarations, certificates, deeds, leases, legislation and other documents required by the City or its agencies.

(5) Legal work pertaining to property acquisition, property disposal, public improvements, public rights of way and easements, and matters relating to public utilities.

(6) Defend all actions brought against the City, its elected and appointed officials, and all of its employees, except as otherwise permitted by law.

(7) Prosecute all civil actions in favor of the City as may be authorized by the City Council.

(8) Prosecute all civil actions in favor of the City which are authorized by statute if said statute provides for the recovery of attorneys fees and if, in the opinion of the City Attorney it is reasonably likely that the City would recover attorney fees sufficient to pay for the cost of litigation.

(9) City Attorney shall be vested with the power to take all necessary steps to collect monies owed to the City by any person or entity.

(10) Attorney shall be vested with the power to enforce the laws of the City and to take all actions authorized by the City.

(11) Prosecute all violations of the El Monte Municipal Code which constitute infractions or misdemeanors.

(12) Report to the City Council on the legal affairs of the City in the manner and time requested by the City Council.

(B) Additional Duties:

(1) Such duties and functions as the City Council may direct by supplement to this Agreement or by resolution.

(2) Any other duty imposed by the City Council.

(C) Out-of-Pocket Expense:

With the approval of the City Manger, the City shall reimburse the City Attorney for such necessary and reasonable out-of-pocket expenses associated with the legal services described in Part (A) in an amount not to exceed \$300.00 per month. Reimbursement for mileage, travel or other out-of-pocket expense of the City Attorney in excess of three hundred dollars (\$300) per month shall require the approval of the City Council.

CITY OF EL MONTE

Personnel Action Form

I. CURRENT INFORMATION - This section is mandatory					
Name E. Clarke Moseley		Emp ID# 4592	Job Title City Attorney		
Job Code 118	Acct No 126.001.00	%	Department City Attorney	Division ---	
FLSA Status: <input type="checkbox"/> Exempt <input type="checkbox"/> Covered	<input checked="" type="checkbox"/> Regular <input type="checkbox"/> Probationary <input type="checkbox"/> Other	<input type="checkbox"/> Hourly <input type="checkbox"/> At Will	Range --	Step --	Salary --

II. ACTION REQUESTED - Check appropriate action(s)				
<input type="checkbox"/> New Hire <input type="checkbox"/> Acting Assignment <input type="checkbox"/> Advancement <input type="checkbox"/> Bonus Assignment <input type="checkbox"/> Deceased	<input type="checkbox"/> Demotion <input type="checkbox"/> Dismissal <input type="checkbox"/> Educ. Incentive <input type="checkbox"/> Layoff <input checked="" type="checkbox"/> Longevity	<input type="checkbox"/> Maternity Leave <input type="checkbox"/> On Duty Injury <input type="checkbox"/> Promotion <input checked="" type="checkbox"/> Reduction <input type="checkbox"/> Reclassification	<input checked="" type="checkbox"/> Reinstatement / <input type="checkbox"/> Rejection <input type="checkbox"/> Resignation <input type="checkbox"/> Retirement <input type="checkbox"/> Return from LOA	<input type="checkbox"/> Sick Leave <input type="checkbox"/> Suspension <input type="checkbox"/> Suspension-w/pay <input type="checkbox"/> Training Pay <input type="checkbox"/> Other:
Effective Date:		Eligible for rehire? <input type="checkbox"/> Yes <input type="checkbox"/> No (If no, explain in "Remarks"). Property collected? <input type="checkbox"/> Yes <input type="checkbox"/> No (If no, explain in "Remarks").		

III. NEW DATA - Indicate changes only; leave other spaces blank.					
Name --		Job Title --			
Job Code --	Acct No --	%	Department --	Division --	
FLSA Status: <input type="checkbox"/> Exempt <input type="checkbox"/> Covered	<input type="checkbox"/> Regular <input type="checkbox"/> Probationary <input type="checkbox"/> Other	<input type="checkbox"/> Hourly <input type="checkbox"/> At Will	Range --	Step --	Salary --
Use the following spaces to record multiple job assignments.					
Job Code (#2)	Job Title (#2)	Acct No	%	Range/Step	Salary
Job Code (#3)	Job Title (#3)	Acct No	%	Range/Step	Salary

IV. REMARKS - Provide complete details about the transaction(s).
See Attachment

V. APPROVAL SIGNATURES			
Department Head City Manager <i>James W. Murawski</i>	Date 2-26-08	Human Resources Officer <i>Erin Kelly</i>	Date 2/26/08

**CITY OF EL MONTE
INTERDEPARTMENTAL COMMUNICATION
OFFICE OF THE CITY ATTORNEY**

DATE: FEBRUARY 20, 2008

TO: JAMES W. MUSSENDEN, CITY MANAGER

FROM: DAVID F. GONDEK, SENIOR DEPUTY CITY ATTORNEY

**CC: MARCIE MEDINA, DEPUTY CITY MANAGER FOR
ADMINISTRATIVE SERVICES**

SUBJECT: E. CLARKE MOSELEY AGREEMENT

Pursuant to the memorandum of February 14, 2008 prepared by myself and approved by you, attached is a Personnel Action Form conforming to the memorandum.

Please execute and submit to the Human Resources office.

CITY OF EL MONTE

INTERDEPARTMENTAL COMMUNICATION
CITY MANAGER'S OFFICE

DATE: February 14, 2008

TO: Marcie Medina, Deputy City Manager Administrative Services *mm*

FROM: James W. Mussenden, City Manager *JWM*

PREPARED BY: David Gondek, Senior Deputy City Attorney *DG*

CC: E. Clarke Moseley, Contracting Party *ECM*

SUBJECT: Modifications and Clarifications for Agreement dated December 5, 2007 by and between the City of El Monte and E. Clarke Moseley

I

This memorandum has been prepared to clarify certain provisions of the public employee's services agreement by and between the City of El Monte and E. Clarke Moseley, dated December 5, 2007 (the "Agreement"), certain terms of the written Agreement as submitted for approval by the City and the City Council meeting on December 5, 2007 are modified in order to conform to the fiscal action as approved. The issues which are clarified in this memorandum are non-substantial in nature and may therefore be handled administratively. The clarifications and technical modifications are as follows:

1. The term of the Agreement is eighteen (18) months commencing December 31, 2007 through June 30, 2009. This is a clarification.
2. Subject to the modifications as relates to deferred compensation under item number 3, base monthly salary of E. Clarke Moseley of \$13,811 as of December 31, 2007 is modified under the Agreement and is reduced to a base monthly salary commencing on January 1, 2008 of \$12,611.
3. Commencing January 1, 2008 under Agreement dated December 5, 2007, Section 19, the deferred compensation plan (401a) employer's contribution is reinstated to nine percent (9%) of Employee Moseley's base salary, plus longevity pay. This is a modification in light of the salary reduction under item number 2, above.
4. Longevity pay for Employee Moseley on and after January 1, 2008 is defined as an additional amount above base salary of two percent (2%) after five (5) years of service. It is acknowledged that Employee Moseley's five (5) year anniversary was May 1, 2007. ~~This is clarification of this compensation item in effect as of December 31, 2007.~~ *ECM*

Marcie Medina

Page 2

Re: Modifications and Clarifications for Agreement

5. Per terms of Agreement dated December 5, 2007, Section 11 subsection H, employee Moseley is entitled to increased benefits or salary granted any Deputy City Manager, Assistant City Manager, City Manager. To clarify any ambiguity as to potentially cumulative increases by employee Moseley due to multiple upper management personnel salary increases, it is stipulated that for the purpose of computing any such potential adjustment under this Section H, that employee Moseley shall be tied to such adjusts, if any, to the Deputy City Manager of Public Safety benefit/salary occur during the term of the Agreement.
6. Under the stipulation for purposes of reference to a single upper level management person in item 5 above, employee Moseley is therefore entitled to: (1) an increase in base pay of four and seventy-five hundredths (4.75%) commencing January 1, 2008, and (2) if other subsequent increases to benefit or base salary occur after March 7, 2008 for the Deputy City Manager of Public Safety, then at such time as such a further increase may take effect for this particular management position, employee Moseley would likewise participate in such an increase under the Agreement.
7. In light of the clarifications and modifications, it is further stipulated that: (1) the changes in base salary under item 2, above, (2) reinstatement of deferred compensation plan under item 3, above and (3) increased benefits of salary granted to employee Moseley under item 5, above, shall be effective on March 1, 2008.
8. All other terms and conditions under the Agreement dated December 5, 2007 shall remain unchanged.

David Gondek is directed to make these modifications and changes to the Agreement dated December 5, 2007 and to re-present the Agreement for re-signature, or in the alternative, this memorandum of clarification is to be filed in Employee Moseley's personnel file and prepare a Personnel Action Form (PAF) for Employee Moseley's signature.

Attachment to Personnel Action Form
for E. Clarke Moseley



1. Effective 3/1/08, employee's base salary is reduced to \$12,611 from \$13,811.
2. Effective 3/1/08, employee's 401A City's contribution is reinstated to 9%.
3. Retroactive to 5/1/07, employee's salary to include 2% longevity pay increase to base salary of \$12,611.
4. Effective 3/1/08, employee to receive 4.75% increase to base salary of \$12,611.
5. Effective 3/1/08, employee to receive any increase in salary or benefit equal to that received by Deputy City Manager of Public Safety (Chief of Police).

AGREEMENT

This AGREEMENT made and entered into this 5th day of December, 2007, by and between the CITY OF EL MONTE, a municipal corporation, the EL MONTE COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic, hereinafter collectively called "Employer," and E. CLARKE MOSELEY, hereinafter called the "Employee," both of whom understand as follows:

WITNESSETH

WHEREAS, Employer desires to employ the services of E. Clarke Moseley as City Attorney/Agency Counsel/City Prosecutor of the City of El Monte/Community Redevelopment Agency, in accordance with the EL-MONTE MUNICIPAL CODE; and

WHEREAS, Employee desires to be employed as City Attorney/Agency Counsel/City Prosecutor of the City of El Monte/Community Redevelopment Agency; and

WHEREAS, it is the desire of Employer, to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Employer (1) to secure and retain the services of Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee's services at such time as he may be unable to discharge fully his duties due to disability, or when Employer may otherwise desire to terminate this Employee; and

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION 1. DUTIES

Employer hereby agrees to employ E. Clarke Moseley, as City Attorney/Agency Counsel/City Prosecutor, to perform the duties specified in local ordinance, California State Codes, and to cooperate in such other City-related duties as the Employer from time to time assigns.

SECTION 2. TERM

- A. The term of this Agreement shall be for three years, from December 31, 2007 through June 31, 2009.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, subject to the provisions set forth in Section 3, Paragraphs A and B, of this Agreement.

RECEIVED
CLERK'S OFFICE
DEC 21
A 9:19

- C. During the term of this Agreement, Employee shall not directly or indirectly solicit employment with any other municipality or redevelopment agency; nor shall Employee directly or indirectly undertake any action of response to any offer of employment by any other municipality or redevelopment agency unless Employee has informed Employer beforehand.
- D. On or before January 1, 2008, Employee may submit a written proposal to Employer for the extension of the term of this Agreement and/or the revision of the provisions of this Agreement and in that event the parties shall enter into good faith negotiations with respect to such proposal. On or before July 1, 2008, Employer shall advise Employee whether or not this Agreement will be extended or revised. Nothing contained herein shall be construed to require Employer and Employee to extend the term or revise the Agreement.

SECTION 3. TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by Employer before expiration of the terms of this Agreement and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment of one (1) year's then current base salary. In addition, Employer agrees to pay the health and welfare premiums, as defined in Section 11 below, for benefits enjoyed by the Employee, or the cash equivalent at the option of Employee, during the subsequent one-year (1-year) period. However, in the event Employee, because of his conviction of any felony or any offense involving a violation of his official duties, or if the City Council finds at the conclusion of a hearing, that the Employee has misappropriated public funds, or has engaged in conduct unbecoming a city official or conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the Employer, then in that event Employer shall have no obligation to pay the severance salary and benefits designated in this paragraph.
- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee, or in the event Employer refuses to comply with any other provision benefiting Employee herein, or the Employee resigns following a request by three (3) members of the City Council that he resign, whether such request be made in public or closed session by official action of the City Council, then, in that event, Employee may, at his option, be deemed to be "terminated" within the meaning and context of Subparagraph A above.
- C. In the event Employee may otherwise voluntarily resign his position with Employer before expiration of the aforesaid term of his employment, Employee shall give Employer sixty (60) days' written notice in advance, unless the parties otherwise agree in writing.

SECTION 4. DISABILITY

If Employee is disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or poor health that does not arise out of his employment nor

in the course of his employment for a period of four (4) successive weeks beyond any accrued sick leave, or for twenty (20) working days over thirty-day (30-day) calendar period, Employer shall have the option to terminate this Agreement, subject to Employee receiving severance pay pursuant to Section 3, Paragraph A above. Employee agrees to submit to a medical or psychological examination by a qualified physician or psychiatrist selected by the Employer, in the event a decision is made under this section. Employer and Employee shall receive a copy of all medical reports related to the examination.

SECTION 5. COMPENSATION FOR INJURY ON DUTY

Whenever Employee is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of Employee's duties, Employee shall become entitled, regardless of Employee's period of service with the City, to leave of absence while so disabled without loss of salary in lieu of temporary disability payments, or maintenance allowance payments, if any, which would be payable for the period of the disability, but not exceeding one year, or until such earlier date as the Employee is retired on disability pension or would be retired for disability pension if eligible under PERS requirements. Employee so disabled may use no other kind of accrued leave during the period of disability. No leave of absence may commence after resignation or termination, whether voluntary or involuntary. All authorized deductions will continue during such period of disability as though Employee was in regular work status.

SECTION 6. SALARY

Employer shall pay Employee for his services rendered pursuant hereto on or after January 1, 2008, a monthly base salary of Twelve Thousand Five Hundred Dollars (\$12,500.00), plus the City calculated longevity bonus adjustment to such monthly base salary, commencing on the fifth (5th) anniversary of the Employee's commencement of service to Employer (e.g., July 1, 2002), payable in monthly installments with monthly base salary at the same time and amounts as other upper management employees of the Employer are paid the applicable longevity bonus adjustment to monthly base salary.

SECTION 7. PERFORMANCE EVALUATION

- A. The City Council may conduct an annual review and evaluation, which shall be in accordance with specific criteria developed jointly by Employer and Employee. Said criteria may be added to or deleted from as the City Council may from time to time determine in consultation with the Employee. Further, the City Council shall provide the Employee with a written summary of the findings and provide an adequate opportunity for the Employee to discuss his evaluation with the City Council in closed session, if so desired by the Employee.
- B. Each year during the terms of this Agreement the City Manager shall conduct a written performance evaluation of the Employee in accordance with the same procedure and standards applicable to a written performance evaluation by the City Manager of senior management-level employees of the Employer. The first such performance evaluation of the Employee by the City Manager shall be conducted between November 1, 2007, and

December 1, 2007, at a date and time mutually convenient to the Employee and the City Manager, and annually thereafter. The City Manager shall provide the Employee with a written copy of the performance evaluation for acknowledgement by the Employee. Upon the request of the City Council, the City Manager shall deliver a copy of each completed written performance evaluation of the Employee for the review and consideration of the City Council in accordance with Section 7.A.

SECTION 8. PREVIOUS AGREEMENT

All of the rights and benefits granted to the Employee under that certain Agreement by and between the Employer and Employee, dated May 7, 2002, shall be deemed to have accrued and remain in full force and effect under this Agreement unless expressly amended or deleted by this Agreement.

SECTION 9. OUTSIDE ACTIVITIES

Employee shall be allowed to continue to represent the Upper San Gabriel Municipal Water District as its general legal counsel, provided such representation does not (a) exceed four (4) hours weekly, (b) said representation is conducted within times and dates as approved by the City Manager.

SECTION 10. AUTOMOBILE

Employer agrees to provide Employee with an automobile allowance of Five Hundred Dollars (\$500) per month at all times during this employment with Employer. Employee shall be responsible for providing automobile liability, property damage and comprehensive insurance in coverage amounts as determined by the City Manager for each automobile owned by Employee which is used in the course of Employee's service to the Employer. The costs of such automobile insurance shall be borne by the Employee. Employee shall be responsible for paying for the operation, repair and maintenance of said automobile. The Employee shall retain a valid California driver's license, as must all employees who receive an automobile allowance. The Employer shall review the Department of Motor Vehicles Records of the Employee from time to time, in a fashion similar to that done in the case of other employees, who receive an automobile allowance, to ensure that the Employee has a valid license and to review the Employee's driving record.

SECTION 11 FRINGE BENEFITS

- A. The Employer shall contribute the prevailing Family Kaiser Rate towards the cost of PERS Health medical insurance Employee and his dependents. If the Employee does not use the full allotment of medical benefits, the remainder will be paid monthly to the Employee as taxable cash. If the Employee can provide to the Human Resources Officer proof of insurance elsewhere, then he may totally drop medical insurance and take the full rate as described in the preceding paragraph as taxable cash.
- B. The Employer shall contribute the three party rate for Ameritas insurance towards a dental insurance policy for the Employee and his eligible dependents. If the Employee

can provide to the Human Resources Officer proof of insurance elsewhere, then he may totally drop dental insurance and take the full rate as described in this paragraph as taxable cash.

- C. The Employer shall contribute the three party rate for the Vision Services Plan monthly towards the premium for the Vision Services Plan for the Employee and his eligible dependents. If the Employee does not use the full allotment of vision benefits, the remainder will not be paid to the Employee.
- D. The City shall provide Medicare, Medicare supplemental insurance, medical insurance at the prevailing 3-Party Kaiser Rate, dental insurance, long term care insurance with inflation protection as offered by PERS and vision insurance to Employee and his present spouse and/or future spouses. Upon the Employee's retirement from the City, and thereafter, the City shall pay the premium and any subsequent increases for the medical insurance in effect at the time of the Employee's retirement. Employee and spouse medical coverage will continue until voluntary cancellation of the policy or until the death of either the employee or spouse and coverage extends to separately and individually for both. If upon retirement, the Employee can provide proof of insurance of any of the above policy elsewhere then he may take the full rate for that policy as taxable cash.
- E. The Employer shall provide a long-term disability for the Employee and shall pay the premiums therefore.
- F. The basic benefit structure of the Employer's medical insurance plans shall not be reduced during the term of this Agreement.
- G. During his employment, the Employer shall pay for the comprehensive long-term care program for the Employee and spouse as offered by PERS with inflation protection. Cash in lieu of this benefit will be paid to the Employee until the next PERS open enrollment for this program. If applicable, the City shall not be responsible for the payment of long-term care benefits after the term of this Agreement unless the Employee has concurrently retired through PERS upon the termination of this Agreement.
- H. If increased benefits or salary are granted to any other individuals who are classified as senior management level personnel of the Employer, during the term of this Agreement, the same or an equivalent increase to such benefits shall be granted to the Employee.

SECTION 12 -- VACATION

Employee shall be entitled to an annual vacation of one hundred and sixty (160) hours.

SECTION 13. SICK LEAVE

- A. Sick leave shall be accumulated at the rate of ten (10) hours for each calendar month of service. Sick leave shall not be considered as a privilege, but shall be allowed only in case of actual sickness or disability of Employee or within the immediate family.

- B. In order to receive compensation while absent on sick leave, the Employee shall notify the City Manager.
- C. Upon death or upon service retirement, the Employee shall be paid at the rate of pay in effect upon retirement, for one-half (½) of all unused accumulated sick leave. The maximum amount and any remainder shall be reported to PERS for retirement purposes.

SECTION 14. PERSONAL LEAVE

Employee will be allowed to use up to twenty (20) hours of sick leave per year for the purpose of conducting personal business, which must be performed during normal business hours.

SECTION 15. RESERVED – NO TEXT

SECTION 16. ADMINISTRATIVE LEAVE

Employee shall receive seventy (70) Administrative Leave hours in each calendar year. Administrative Leave hours cannot be carried over year to year, and shall be lost if not used by the end of each calendar year.

SECTION 17. ANNUAL PHYSICAL

Employee agrees to submit once per calendar year to a complete physical examination by a qualified physician selected by the Employer. Employer shall pay the cost and receive a copy of all medical reports related to said examination. In the event of a dispute, Employee may furnish a medical report by a qualified physician of his choosing at Employee's cost.

SECTION 18. ACKNOWLEDGEMENT

Employee represents and Employer acknowledges that Employee has direct or indirect financial interest in real property located with the City of El Monte commonly described as:

1. 11001 Valley Mall
2. 11401 Valley Boulevard
3. 11411 Valley Boulevard
4. 11352-4-6-8-60 Valley Boulevard
5. 11750 Ramona Boulevard (La Madera Lot)

SECTION 19. DEFERRED COMPENSATION PLAN

The Employee must join the Deferred Compensation Plan offered by the Public Employees' Retirement System and/or the City's 401(a) Plan. The Employer's contribution to the Plan shall be a total of nine percent (9%) of the Employee's base salary, plus longevity pay, as then applicable. The amounts contributed to the Plan are subject to the statutory limits outlined in the Codes of the United States Internal Revenue Service. The Employee may still participate in other City deferred compensation plans in addition to the Plan offered by the Public Employees' Retirement System.

SECTION 20. IRS SECTION 125C BENEFITS

The Employee is eligible for benefits payable under IRS Section 125c. As outlined in the IRS Code, the Employee may submit certain out of pocket expenses (such as unreimbursed medical expenses and child care expenses) to the Section 125c Administrator appointed by the Employer. If such out of pocket expenses meet the requirements of the IRS Code, these expenses shall be deducted from the Employee's gross pay as reported to the IRS thereby lowering Employee's total tax liability during the year.

SECTION 21. HOLIDAYS

The Employee will be working a "4/10" schedule. Hours of work will be each week from 7:00 a.m. to 5:30 p.m., Monday through Thursday.

- A. Holidays and personal leave days will be counted as ten (10) hours.
- B. Following is a list of holidays to be observed by the Employee:
 - 1. Veteran's Day
 - 2. Thanksgiving Day
 - 3. 1/2 Day before Christmas
 - 4. Christmas Day
 - 5. 1/2 Day before New Year's
 - 6. New Year's Day
 - 7. Martin Luther King, Jr. Birthday
 - 8. President's Day
 - 9. Memorial Day
 - 10. Independence Day
 - 11. Labor Day
 - 12. Floating Holiday
- C. A holiday bank shall be established for the Employee at the rate of ten (10) hours for each holiday which occurs during the year to a maximum of 110 hours per year beginning each calendar year. On or about January 20 of each year hereafter, the Employee will receive a cash payment for all remaining time in the holiday bank at straight time on the base rate. There shall be no carryover of banked hours from one calendar year to another.
- D. If the Employee leaves the Employer, he shall be paid a pro-rata amount of unused holiday pay. He shall be paid all unused holiday pay equivalent to the number of holidays that occur between January 1 and the date of his termination. For example, if the Employee leaves effective July 1 and has not been paid holiday pay at all during that calendar year, he will be paid a total of fifty (50) hours of holiday pay for New Year's Day, Presidents' Day, Memorial Day and the floating holiday. If, however, the Employee used more holiday hours than have occurred between January 1 and the termination date, the amount of over usage shall be deducted from his accrued leave balances or final pay.

- E. If the Employee has exhausted his accrued holiday pay and a holiday occurs, he must use accrued leave in order to be paid on that day. Vacation pay shall be the first used. If the Employee has no vacation pay, other types of accrued leave may be used. However, the Employee may not use sick leave to be paid for a holiday. If the Employee has exhausted all accrued leave balances on a holiday, he will not be paid on that day.
- F. Holidays falling on Sunday will be observed on the following Monday.
- G. All municipal buildings will be open a minimum of thirty (30) hours each week.

SECTION 22. RETIREMENT

The City provides retirement coverage through the Public Employees' Retirement System (PERS).

- A. The Employer Contribution Rate is established by the PERS Board of Administration. The City will contribute the full amount of Employee's contribution toward retirement.
- B. Additional Retirement Benefits
 - 1. "2% at 55" formula as adopted by the City for General Employees. "1% at 55" formula as adopted by the City for Miscellaneous Employees and administered by the Public Agency Retirement System (PARS) or equivalent except that all of the Employee's PERS service inside and outside the City of El Monte will be credited towards his participation in the PARS plan.
 - 2. 1959 Fourth Level Survivors Benefits as adopted by the City.
 - 3. Post Retirement Survivor Allowance for 50% surviving spouse continuance as adopted by the City.
 - 4. Highest One Year compensation as the period for determining retirement benefits.
 - 5. Conversion of Unused Sick Leave toward service credit.
 - 6. Post Retirement Survivor's Benefit for continuation of benefits after remarriage.
 - 7. Five Percent (5%) Retirement Cost of Living Allowance Maximum for Miscellaneous Employees.
 - 8. The City of El Monte elects to pay seven percent (nine percent for safety members) of the normal employee contributions as Employer paid member contributions (EPMC) and report same to PERS as compensation (G.C. 20023 [C][4]).
 - 9. Pre-Retirement Optional Settlement 2 Death Benefit (G.C. 21365.6).

SECTION 23. COMPENSATION PAYABLE BY EMPLOYER SHARED BY CITY AND RDA

The City of El Monte and the El Monte Community Redevelopment Agency as between themselves as the Employer, shall pay Employee's salary and benefits in such proportion or percentage as may be determined by the City/Agency.

SECTION 24. DUES AND SUBSCRIPTIONS

Employer agrees to pay for the reasonable professional dues and subscriptions of Employee necessary for his continuation in associations and organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of the Employer.

SECTION 25. PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees to pay for reasonable travel and sustenance expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to, the annual conferences and meetings of the California League of Cities, Contract Cities, Independent Cities, City Attorney Association of Los Angeles County (CAALAC).
- B. Employer also agrees to pay for the expenses of Employee for workshops and seminars that are necessary for his professional development and for the good of the Employer.
- C. Employer agrees to pay for the expenses of Employee for out-of-state travel in accordance with City policy or as allowed other employees.

SECTION 26. GENERAL EXPENSES

Employer does recognize that certain expenses of a non-personal and job-affiliated nature are incurred by Employee in conjunction with his responsibilities hereunder and shall reimburse or pay said general expenses in accordance with existing City policy for other employees.

SECTION 27. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The Employer, in consultation with the Employee, shall fix any other such terms and conditions of employment, as it may determine from time to time relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.

SECTION 28. GENERAL PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and insure to the benefit of the heirs at law and executors of Employee.

- C. It is recognized and agreed by the parties that the position of City Attorney is an at will position that will serve at the pleasure of the Employer subject only to the terms and conditions of this agreement.
- D. It is recognized and agreed by the parties that the City Attorney position will continue to be exempt from the overtime provisions of the Federal Fair Labor Standards Act.
- E. Interpretation. This Agreement has been prepared by each of the parties hereto. Therefore, this Agreement shall not be construed in favor of or against either party but shall be construed as if all parties prepared it.
- F. Entire Agreement. This Agreement supersedes either oral any and all other agreements, promises, and representations either oral or in writing, between the parties hereto with respect to the employment of Employee by Employer and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that not other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.
- G. Modifications. Any modification of this Agreement will be effective only if it is in writing and signed by both parties.
- H. Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.
- I. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- J. Notices. All notices under this Agreement shall be in writing and shall be delivered by personal service or by certified or registered mail, postage prepaid, return receipt requested. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service if served personally, or if served by facsimile transmission (with confirmation of receipt), or seventy-two (72) hours after the mailing. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notices of the parties shall be addressed as follows:

Employer:
11333 Valley Boulevard
El Monte, CA 91731

Employee:
11177 Wildflower Road
Temple City, CA 91780

- K. Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- L. In the event the Employer refuses to pay the Employee under the Severance Provision of Section 3A of this Agreement, the Employer shall pay the Employee for all reasonable attorney fees and costs incurred by the Employee in order to enforce the Agreement.
- M. Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed in its behalf by the Mayor/El Monte Community Redevelopment Agency Chairperson and duly attested by its City Clerk/El Monte Community Redevelopment Agency Secretary and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF EL MONTE


DATED:


ERNEST GUTIERREZ, MAYOR

DATED:


JAMES MUSSENDEN, CITY MANAGER

APPROVED AS TO FORM:

 12-10-07
DAVID F. GONDEK,
SPECIAL COUNSEL

DATED: 12/4/07

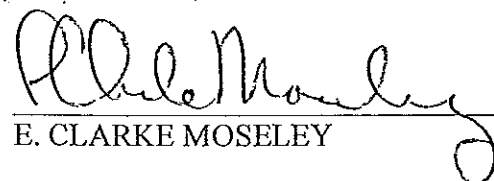
EL MONTE COMMUNITY
REDEVELOPMENT AGENCY


ERNEST GUTIERREZ, CHAIRPERSON

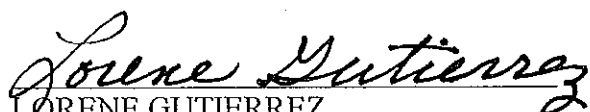
ATTEST:



LORENE GUTIERREZ
CITY CLERK

EMPLOYEE


E. CLARKE MOSELEY

ATTEST:


LORENE GUTIERREZ
CLERK FOR THE EL MONTE
COMMUNITY REDEVELOPMENT
AGENCY

APPROVED AS TO FORM: 
J. G. H. 12-10-07